IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2025 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAKIL ALIAS TEJA GULAMHUSEIN SHEIKH

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 2025 of 2003

MS BANNA S DUTTA for Petitioner No. 1

MS NANDINI JOSHI,AGP for Respondent No. 1-3

CORAM : MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 19/05/2003

ORAL JUDGEMENT

1. The petitioner, in this petition, has challenged the order of detention dated 1.11.2002 passed by the Commissioner of Police, Baroda City, the respondent no.1

herein. The petitioner is detained under section 3(2) of the Gujarat Prevention of Anti-social Activities Act, 1985 (in short 'the Act'). In the grounds of detention supplied to the petitioner, the detaining authority has placed reliance on three offences registered against the petitioner; two on which reliance is placed are under section 307,427 of IPC and under section 135 of the Bombay Police Act and 3,4,5 and 6 of the Explosives Act. These cases are pending for trial before the Court while the third case which is for an offence punishableunder section 25(1)(c) of the Arms Act is pending investigation. Over and above the aforesaid criminal cases, the detaining authority has also placed reliance on the statements of two witnesses whose names are not disclosed, claiming privilege under section 9(2) of the Act. Considering the above material, the detaining authority has recorded a finding that the detenu being a dangerous person within the definition of section 2(c) of the Act, with a view to preventing him from acting in any manner prejudicial to the maintenance of public order in the area pertaining to Baroda city, the detention of the petitioner is necessary and, therefore, while exercising powers under section 3(2) of the Act, the order of detention has been passed.

2. The learned Counsel for the petitioner has raised many contentions while challenging the order of detention. However, it is not necessary for me to deal with each and every contention in view of the fact that the petition is required to be allowed on the ground of delay in passing the impugned order. The learned Counsel submits that there is delay in passing the order of detention inasmuch as the last date of offence alleged to have been committed by the petitioner is 9.9.2002 and the order of detention is passed on 1.11.2002 and, therefore, there is a delay of 52 days in passing the order of detention and, therefore, the live link between the alleged prejudicial activity and the order of detention is snapped. The learned Counsel has, therefore, submitted that the continued detention of the petitioner is bad in law. To substantiate the said submission, reliance is placed on the decision of the Apex Court rendered in the case of PN Paturkar Vs. S.Ramamurti, AIR 1994 SC 656 and Ilesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City, 1997(1) GLH 381.

3. In P.N.Paturkar's case (supra), the Supreme Court set aside the order of detention on the ground of delay. That was a case where there was a delay of five months eight days from the registration of last offence and more than four months from the submission of proposal.

Considering the said fact, the Apex Court was of the view that due to unexplained delay, whether short or long, especially when the detenu had taken a specific plea of delay, the order of detention was required to be quashed and set aside.

4. In the instant case also, in para 5 of the petition, the petitioner has raised a specific plea that there is a delay of 52 days in passing the order of detention and the live link between the alleged prejudicial activity and the order of detention is snapped and, therefore, the continued detention of the detenu is bad in law.

5. The respondent no.1 has filed the affidavit-in-reply in the case. I have gone through the said affidavit. Para 5 of the said affidavit deals with the contentions raised by the petitioner in paras 8,10, 13,15 and 16 of the petition. On going through the said affidavit, it is clear that the averments made therein are quite vague in nature and nothing has been stated regarding the averments made in para 5 of the petition. Suffice it to say that the detaining authority has not at all explained the delay in passing the order of detention. Thus, in view of the decision of the Apex Court and this Court rendered in the case of Elesh Patel (supra), I am clearly of the opinion that the detaining authority having failed to explain the delay in passing the order of detention, this unexplained delay makes the grounds of detention not proximate vitiating the order of detention.

6. In the result, the petition is allowed. The impugned order of detention dated 1.11.2002 passed against the detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is accordingly made absolute with no order as to costs. Direct Service.

(Kshitij R.Vyas,J.)

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